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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency Band )  
\_\_\_\_\_ )

PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

**COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard") hereby submits comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding, released November 4, 1994 (the "FNPRM"). Vanguard supports the Commission's efforts to achieve regulatory parity among commercial mobile radio services ("CMRS"). Accordingly, in its rules for all competing CMRS systems, including both cellular and broadband Personal Communications Services ("PCS") as well as Specialized Mobile Radio ("SMR") services addressed in the FNPRM, the Commission should seek to eliminate unwarranted regulatory impediments to licensees' ability to compete in the CMRS marketplace. Additionally, any decision by the Commission to reallocate spectrum must include provisions that place the burdens caused by migration of existing licensees to new frequencies on new wide-area providers.

Congress has recently amended the Communications Act in order to ensure that "equivalent mobile services are regulated in the same manner." H. R. Rep. No. 111,

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103rd Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 586. Congress' purpose in mandating implementation of "regulatory parity" among CMRS technologies is to enhance competitiveness for systems that provide similar types of service to the public. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 393 (1993) (codified at 47 U.S.C. § 332(c)) (Commission determination that a proposed regulation "promote[s] competition among providers of commercial mobile services . . . may be the basis for a Commission finding that such regulation . . . is in the public interest").

The Commission has properly incorporated Congress' desire for a level CMRS playing field in proposing rules in this proceeding. See FNPRM at ¶ 2. The Commission states that its "overriding goal in [creating CMRS regulations] has been to achieve regulations that maximize competition among CMRS providers," and that its proposed SMR rules are intended to "further[] the congressionally mandated goal of regulatory symmetry between SMR, cellular and broadband PCS." Id.

As a CMRS provider, Vanguard commends the Commission's efforts in this regard, and also supports the position of the Cellular Telephone Industry Association ("CTIA"), contained in comments filed simultaneously herewith, that rules for all CMRS offerings should be governed by the same objective of eliminating, to the greatest extent possible, restrictions on licensees' ability to compete with other CMRS systems. See CTIA Comments at 4.

Adoption of rules providing for availability of sufficient spectrum for use by service providers in each market is consistent with this overall goal of a competitive CMRS environment. As pointed out by CTIA, the Commission has applied its authority to reallocate spectrum toward a similar end in other proceedings. CTIA Comments at 2-3. Because of the public interest in uninterrupted, unimpaired service by incumbent SMR licensees, any spectrum reallocation scheme must include requirements that: (i) all associated costs to the incumbent are borne by the incoming co-channel licensee; (ii) incumbents are provided sufficient time to effect the retuning of existing facilities, including time needed to modify customer equipment, and (iii) no impairment of incumbent service otherwise results. See id. at 6.

### **CONCLUSION**

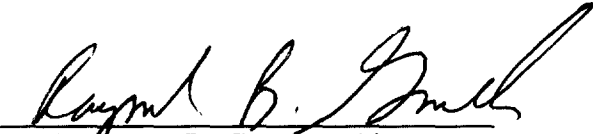
Vanguard applauds the Commission's efforts to ensure regulatory parity for all CMRS technologies, as the means to open CMRS markets to full competition. To accomplish this goal, the Commission must continue to seek ways to reduce the regulatory requirements that unnecessarily hinder the ability of CMRS providers, whether cellular, PCS or SMR, to participate fully in the evolving telecommunications marketplace. As wide-area SMR licensees become part of the CMRS industry, Vanguard urges the Commission to pursue the broad approach to CMRS regulatory parity advocated by CTIA. Id. at 6-7. At the same time, any frequency retuning of existing licensed systems to accommodate new entrants should only occur if associated costs are fully paid by the new

entrants who will be the beneficiaries of such retuning, if sufficient time is permitted to accomplish the retuning, and if no harm to incumbent licensees' service results.

Respectfully submitted,

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